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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/107,643	06/30/1998	RHONDA TRACY	TRAC-100FWC-	8341

7590

01/20/2004

RHONDA TRACY  
233 GRANDVIEW  
GLEN ELLYN, IL 60137

EXAMINER
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RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 01/20/2004

45

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/107,643

Applicant(s)

TRACY, RHONDA

Examiner

Dennis Ruhl

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Applicant's amendment of 12/1/03 has been received and entered. The examiner takes notice that this amendment was in response to the Board of Patent Appeals and Interferences decision of 9/30/03. Currently claims 7 and 8 are pending. The claims 7,8, are not deemed to be allowable as set forth below.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7,8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Foreman (4816025) in view of McConnell et al. (3461872).

Foreman discloses a disposable diaper that has a body portion 20 with two enlarged end portions 22,24. The narrow intermediate portion is 26. Each end portion has a waistband portion as claimed. The liquid absorbent material layer is 44 and the plastic layer is 42. The soft padding member is 262, which is also non-abrasive. The padding member is adjacent the plastic layer edge, is distinct from all of the absorbent material layer and plastic layer and is formed from a soft substance/non-abrasive material as claimed. The cuff 262 is described as being "compliant, soft feeling and non-irritating to the wearer's skin" and may be made from foam or elastic foam (provides cushioning). Foreman does not disclose that the soft padding member extends from the outside to inside of the diaper and wraps over the plastic layer edge. McConnell discloses a garment used to retain an absorbent in place. McConnell discloses that the waist edge regions have a covering that wraps the garment edge so

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as to prevent contact with the elastic 21. See figure 2. This will provide a soft comfortable surface for the skin to contact and creates a smooth edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to wrap the edge of the padding member of Foreman over the plastic layer from inside to outside in a manner as shown in figure 2 of McConnell, so that the wearer of the diaper has a smooth waist edge to contact the skin.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR



**DENNIS W. RUHL**  
**SUPERVISORY PATENT EXAMINER**